

REMARKS

Applicant has carefully reviewed the Office Action of October 7, 2004, and offers the following remarks to accompany the above amendments.

Applicant initially amends the specification in two places to insert reference characters and fix typographical errors. No new matter is added by these amendments, but the specification is made more readable.

Claims 1-27 were provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as claims 1-27 of copending Application No. 09/753,014 (the parent application of the present application). Applicant acknowledges this double patenting rejection, and notes that Applicant is keeping the parent application alive so as to fix the filing date thereof so that the present application is afforded the proper priority date. Specifically, the parent application was filed on January 2, 2001 with missing parts. Applicant received an appropriate filing receipt reflecting the January 2, 2001 date. Applicant submitted the missing parts and was subsequently issued a new filing receipt for the parent application with a filing date of February 26, 2001. When Applicant filed the current application, the filing receipt indicated that the filing date of the parent application was February 26, 2001. The February 26, 2001 date is incorrect and should be January 2, 2001. Applicant filed a request to correct the filing receipt for both applications, but to date has not received corrected filing receipts and, as evidenced by the date listed on the cover sheet of the Office Action in the parent application, the correction has not been made.

Applicant will resubmit the requests to correct the filing receipts for both applications in the near future, but files the present response without doing so, so as to avoid paying any government extension of time fees.

Applicant also notes that in the preparation of formal drawings, Figure 7 has omitted an arrow head under the bracket labeled Interface 30. Applicant will provide a new version of Figure 7 by way of a supplemental response in the near future, but points this error out at this time so that the Examiner is alerted to this error and the intended fix.

Claims 1-4, 6-14, 16-22, and 24-27 were rejected under 35 U.S.C. § 102(b) as being anticipated by Abensour et al. (hereinafter "Abensour"). Applicant respectfully traverses. For the Patent Office to establish anticipation, the Patent Office must show where each and every

claim element is located in the reference. Further, the elements of the reference must be arranged as claimed. MPEP § 2131.

Applicant herein amends claim 1 to move elements from the preamble into the body of the claim. Specifically, the body of claim 1 now recites, "wherein the storage delivery unit is any one type in a family of different types of service delivery units, each type of service delivery unit in the family providing a network service that is different than the network service provided by the other types of service delivery units in the family. . . ." The Patent Office, in its analysis of original claim 1, does not identify where in Abensour any of these elements can be found. In fact, Abensour does not teach that the service delivery unit is one type in a family of different types of service delivery units because Abensour only teaches one type of service delivery unit. Likewise, because Abensour only teaches one type of service delivery unit, there is no teaching or suggestion that each type of service delivery unit provides a network service that is different than the network service provided by the other types of service delivery units in the family, as recited in the claim. To this extent, there are multiple claim elements which are not taught or suggested by Abensour. Since there are claim elements which are not taught or suggested by Abensour, the claim is not anticipated.

Claims 2-4 and 6-10 depend from claim 1, and are not anticipated at least for the same reasons. Applicant requests withdrawal of the § 102(b) rejection of claims 1-4 and 6-10 at this time.

Claim 11, as amended, now also pulls the elements of the preamble into the body of the claim. Specifically, the body of the claim now recites "the network interface unit being any one type of a plurality of different types of network interface units, each type of network interface unit having the connection logic for connecting to a network medium that is different than the network mediums to which the other types of network interface units can connect. . . ." The Patent Office, in its analysis of original claim 11, does not identify where in Abensour any of these elements can be found. In fact, Abensour does not teach that the network interface unit is one of a type of a plurality of different types of network interface units, or that each type of network interface unit having the connection logic for connecting to a network medium that is different than the network mediums to which the other types of network interface units connect, because Abensour only teaches one type of network medium. As such, Abensour does not teach

or suggest these claim elements. Since Abensour does not teach or suggest these claim elements, Abensour cannot anticipate claim 11.

Claims 12-14 and 16-19 depend from claim 11, and are not anticipated at least for the same reason. Applicant requests withdrawal of the § 102(b) rejection of claims 11-14 and 16-19 at this time.

Claim 20 recites a family of different types of network interface units. The Patent Office points to Abensour FR element 22 in Figures 4 and 5. However, there is no "family of different types of network interface units" in FR element 22 or Figures 4 and 5. To the contrary, only one type of network interface unit is shown. Since the claim recites a family, and the reference only shows one, the reference cannot anticipate claim 20.

Claims 21, 22, and 24-27 depend from claim 20, and are not anticipated at least for the same reasons. Applicant requests withdrawal of the § 102(b) rejection of claims 20-22 and 24-27 at this time.

Claims 5, 15, and 23 were rejected under 35 U.S.C § 103 as being unpatentable over Abensour. Applicant respectfully traverses. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every claim element is located in the modified reference. MPEP § 2143.03. Before the Patent Office can modify a reference, the Patent Office must do two things. First, the Patent Office must articulate a motivation to modify the reference, and second, the Patent Office must provide actual evidence to support the motivation to modify the reference. *In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000).

Applicant initially traverses the rejection of claims 5, 15, and 23 because the Patent Office has not provided the requisite actual evidence. Specifically, the Patent Office asserts that the motivation to modify Abensour is "to take advantage of widely available and use [sic] technology." This assertion lacks any supporting evidence, and as such, the motivation to modify Abensour is improper. Since the motivation to modify Abensour is improper, and Abensour admittedly does not show the cable and DSL technology recited in the claims, the Patent Office has not established *prima facie* obviousness.

Even if the modification to Abensour is proper, a point which Applicant does not concede, Abensour does not teach or suggest the elements of the independent claims, as explained above. The proposed modification to Abensour does not cure this deficiency. Since Abensour does not teach or suggest all the claim elements for the underlying independent claims,

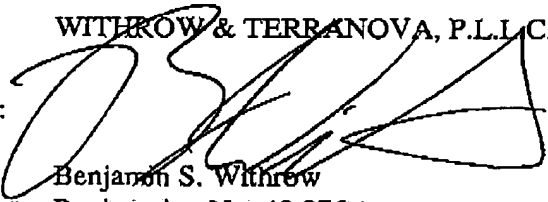
Abensour does not establish *prima facie* obviousness for claims 5, 15, and 23. Applicant requests withdrawal of the § 103 rejection of claims 5, 15, and 23 at this time.

Applicant requests reconsideration of the rejections in light of the remarks and amendments presented herein. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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